## UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

H&M INTERNATIONAL TRANSPORTATION, INC.

and Cases 22-CA-089596

22-CA-095095

**HARRY NEILAN** 

**UFCW, LOCAL 312** 

and Case 22-CB-106127

**HARRY NEILAN** 

## ORDER<sup>1</sup>

The General Counsel's request for special permission to appeal Administrative Law Judge Mindy Landow's February 28, 2014 order that Antonio Vicente produce his cellphone's memory card is granted. On review, the appeal is denied on the merits. We agree with Judge Landow and the General Counsel that, under Board law, Vicente's testimony is likely sufficient to authenticate the recording that Vicente made with his phone for admissibility purposes. However, we find that the General Counsel has failed to establish that the ALJ abused her discretion in ordering production of the memory card for reliability purposes.

With respect to the legitimate privacy concerns raised by the General Counsel regarding the personal information on Vicente's cellphone memory card, we find that production of the memory card should be subject to a protective order agreed upon by the parties, or formulated by the judge in the absence of such agreement, requiring that

<sup>&</sup>lt;sup>1</sup> The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

the memory card be given to a designated qualified expert in forensic analysis of electronic records, not in the direct employ of any party, for retrieval and review of the audio file at issue, and any associated metadata, in order to protect the confidentiality and integrity of the data.<sup>2</sup>

Dated at Washington, D.C., May 23, 2014

KENT Y. HIROZAWA, MEMBER

HARRY I. JOHNSON, III MEMBER

NANCY SCHIFFER, MEMBER

<sup>&</sup>lt;sup>2</sup> We note that there is no contention that the card contains evidence of protected activity.